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WEI TE CHUNG				
FOXCONN INTERNATIONAL, INC.				
1650 MEMOREX DRIVE				
SANTA CLARA, CA 95050				
EXAMINER				
PARKER, BRANDI P				
ART UNIT		PAPER NUMBER		
3624				
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12/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/822,098

Applicant(s)

YEH ET AL.

Examiner

BRANDI P. PARKER

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/20/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Acknowledgements

1. The following is a Second Non-Final Office action in response to communications filed on 10/20/2008. Claim 4 has been amended.

Response to Applicant's Remarks

2. Applicant's amendment to claim 4 filed on 10/20/2008, has been fully considered and is not persuasive. Whether a method appropriately includes particular machines to qualify as a section 101 process may not always be a straightforward inquiry. As *Comiskey* recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter." *In re Comiskey*, 499 F.3d 1365, 1380 (Fed. Cir. 2007), (citing *In re Grams*, 888 F.2d 835, 839-40 (Fed. Cir. 1989)). In other words, nominal or token recitations of structure in a method claim should not convert an otherwise ineligible claim into an eligible one. *Ex parte Langemyr* (BPAI 2008-1495, 2008). Showing the performance report on a computer interface does not convey whether or not a machine or apparatus generated the report. Therefore, the rejection of 4-11 under 35 USC § 101 is sustained.

3. Applicant's arguments with respect to the rejection of claim 1-11 under 35 USC § 102 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zeif (US 7209859) in view of Park et al (US 2003/0004969).

6. With respect to claims 1, 3, and 4 Zeif teaches a performance assessing system comprising a database and a plurality of client computers connected with an application server, the application server being connected with a product machining scheduling system, wherein:

- a. the database stores a plurality of products machining documents and a plurality of performance assessing tables of employees (column/line 11/54-56, regarding data collection table storing real time production data); and

- b. the application server comprises:
 - i. a machining status tracing module for collecting daily schedule results from the product machining scheduling system, storing the schedule results in a corresponding products machining document, and (column/line 12/54-60, regarding schedule shift time and production run time);
 - ii. a performance assessing module for computing an employee's work hours and work efficiency, analyzing the employee's work quality, and storing the starting time record, the finishing time record, the employee's work hours, the employee's work efficiency, and the employee's work quality in a corresponding employee performance assessing table (column/line 29/49-61, regarding tracking employee efficiency including employee's daily hours); and
 - iii. a performance report generating module for generating a performance report according to the work hours, the work efficiency, and the work quality of the employee stored in the performance assessing table (column/line 6/32-35).

Zeif does not directly teach the recording the product's start and finish time. However, Park teaches:

storing each product's machining status, actual starting time and actual finishing time in the products machining document (paragraph 0015)

generating a starting time record and a finishing time record for each product according to the products machining documents (paragraph 0015)

It would have been obvious to one of ordinary skill in the art to include the business system of Zeif with the ability to the recording the product's start and finish time as taught by Park since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

2. As to claim 2 and 5, Zeif teaches the performance assessing system as described in claim 1, wherein the machining status tracing module comprises a schedule results collecting sub-module and a finished products information maintaining sub-module, wherein:

c. the schedule results collecting sub-module collects daily schedule results from the product machining scheduling system, and stores the schedule results

in the products machining documents; and the finished products information maintaining sub-module records and stores the actual starting times, the actual finishing times, and the machining statuses of the products in the performance assessing tables (column/line 24/23-41, regarding equipment tracking interface).

3. With respect to claim 10, Zeif teaches the performance assessing method as described in claim 4, wherein the step of analyzing the work quality of the employee comprises:

d. checking whether the products are behind or ahead of schedule according to the machining statuses of the products in the performance assessing table of the employee, and storing the checking results in the performance assessing table of the employee (column/line 9/ 36-40, regarding the interactive screen displaying real-time data including how far ahead or behind schedule the employee is in producing units); and

e. inspecting the quality of the products finished by the employee, and storing the inspection results in the performance assessing table of the employee (column/line 36/22-30, regarding quality inspection station and collected data being stored and reported).

4. As to claim 11, Zeif teaches the performance assessing method as described in claim 10. Wherein the quality of the products checked may be passed or rejected consist of language that suggest or makes optional but does not require steps to be

performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. MPEP §2106 II C

5. Regarding claims 6-9, Zeif teaches the method in claim 4, the provides the work hours, work efficiency and the scheduled work time for each product finished by the employee (Figures 16a-d, where a particular is associated with a workstation where a specific product is produced). The actual start time at each particular station begins when the employee inserts and employee identification card (column/line 12/45-48). Because the numbers required for claims 6-9 are provided in Zeif, a predictable result would be to utilize old and well known mathematical methods to calculate specific data. Therefore, it would have been obvious to one with ordinary skill in the art to perform simple arithmetic on the data provided by the system in Zeif to produce work hours, work efficiency, scheduled work time, and actual work time.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Headley et al (US 7, 386, 586, regarding scheduling and monitoring computer processes).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI P. PARKER whose telephone number is (571) 272-9796. The examiner can normally be reached on Mon-Thurs. 8-5pm.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley B. Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRANDI P PARKER/
Examiner, Art Unit 3624

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 3624